REMARKS

The Examiner is thanked for extending the courtesy of an interview to Applicant's representatives on October 30, 2003.

Reconsideration and allowance of this application are respectfully requested. Currently, claims 22-24, 32-35 and 37-42 are pending in this application. Claims 22-24, 32 and 33 have been allowed.

Objection to the Claims:

Claims 36-38 were objected to under 37 CFR 1.75(c) as being in improper form for failing to limit the subject matter of a previous claim. Claim 36 has been canceled. Claims 37 and 38 have been editorially revised to insure that these claims further limit base claims 34 and 35, respectively. Applicant thus respectfully requests that the objection to claims 37 and 38 be withdrawn.

Rejection Under 35 U.S.C. §102:

Claims 34-38 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Berra et al (U.S. '759, hereinafter "Berra"). Applicant respectfully traverses this rejection.

For a reference to anticipate a claim, each element must be found, either expressly or under principles of inherency, in the reference. Applicant respectfully submits that Berra fails to disclose each element of the claimed invention. For example, Applicant submits that Berra fails to disclose changing communication speed with an external device to a higher communication speed upon the determination of a rewrite mode and before storing in a second memory a rewrite control program sent from the external device, the rewrite control program being executed for rewriting at least one of a device

control program and data stored in a first memory, as recited by independent claim 34 and claim 37 which depends therefrom. Applicant also submits that Berra fails to disclose changing a speed of communication with an external device to a higher communication speed upon the determination of a rewrite mode and before receiving the rewrite control program from the external device for storage in a second memory, the rewrite control program stored by the second memory being executed to rewrite a first memory with at least one of a new device control program and data, as required by independent claim 35 and claim 38 which depends therefrom.

The above claimed features are supported by, for example, steps S1300-S1350 in Fig. 12 and page 42, line 19 to page 43, line 9 of the specification. Through the above claimed features, the rewrite control program may be received and executed at a higher baud rate (i.e., higher communication speed).

Col. 14, lines 49-53 of Berra indicates that "...diagnostic tool 28 will continue to send the rest of the new computer program code to the flash memory chip Z179 (through the microprocessor chip Z144) in an iterative, self-checking process." While col. 15, lines 13-16 of Berra discloses resetting the baud rate to a higher level "for the actual transmission of computer programs to the microprocessor chip Z144 from the diagnostic tool 28," the communication being performed at the higher baud rate level is for reprogramming non-volatile memories similar to memory chip Z179 of controller 12. For example, col. 15, lines 1-9 of Berra specifically indicates that the high baud rate mentioned later in col. 15 (in the same paragraph) is for reprogramming the non-volatile memories of on-board vehicle computer circuits like chip Z179 in engine controller 12. The higher baud rate disclosed in col. 15 is therefore directed to increasing the speed of

communication at the time device control programs are being rewritten, not at the time rewrite control programs are being communicated as in the present invention.

Through the above features required by independent claims 34 and 35, the rewrite control program may be performed at a higher baud rate. (See, e.g., page 43, lines 2-9 of the specification). In contrast, col. 15 of Berra merely discloses increasing the baud rate for communication associated with a device control program. As noted in col. 14, lines 49-53 of Berra, new computer program code provided to non-volatile memories such as flash memory chip Z179 is reprogrammed through microprocessor chip Z144.

Moreover, claims 34 and 35 specifically require increasing the communication speed upon the determination of the rewrite mode. This feature is supported by steps S1300-S1330 of Fig. 12 of the present application. Berra fails to disclose increased communication speed being triggered by the determination of a rewrite mode.

Accordingly, Applicant respectfully submits that claims 34-38 are not anticipated by (nor "obvious" over) Berra and therefore respectfully requests that the rejection of these claims under 35 U.S.C. §102 be withdrawn.

New Claims:

New claims 39-42 have been added to provide additional protection for the invention. Independent claims 39 and 40 are identical to independent claims 34 and 35 but the phrase "upon the determination of a rewrite mode" in the last paragraph of each of these claims has been changed to "after the determination of a rewrite mode." Claims 41 and 42 depend from claims 39 and 40, respectively. Applicant submits that these new claims are allowable.

Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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